

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**LEE CONSTRUCTION, INC.
Mills County, Iowa**

**ADMINISTRATIVE CONSENT ORDER
NO. 2008-WW- 17**

**TO: Aaron Rodenburg
 Registered Agent
 Lee Construction, Inc.
 607 S. Main St.
 Suite 100
 Council Bluffs, IA 51503**

I. SUMMARY

Pursuant to this Administrative Consent Order (Order), Lee Construction, Inc. hereby agrees to comply with all storm water discharge permit requirements for the development known as the Lake Ohana Subdivision near Glenwood, Iowa and to pay penalties as set forth herein.

NOTE: A permit holder is responsible for on-going compliance for the duration of a development project, including individual lot developments, unless the permit holder transfers responsibility as provided in 567 Iowa Administrative Code (IAC) 64.6(6).

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Thad Nanfite
Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Ph: 712-243-1934

Relating to this Order:

Jon C. Tack
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

Payment of penalty to:

Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. On August 2, 2004, the Department received a Notice of Intent for NPDES Coverage under General Permit #2 (Notice of Intent) filed on behalf of "Nakamoto Tomono Land" and Craig Nakamoto. N-T Lands, LLC is the legal name of Nakamoto Tomono Land. The Notice of Intent was in reference to Lake Ohana Subdivision. The Notice of Intent indicated that the project would consist of approximately 350 lots on 650 acres to begin in October 2004. Storm water discharge authorization no. IA-8074-7879 was issued on August 3, 2004 to Craig Nakamoto and Nakamoto Tomono Land.

2. Ohana Lakes, LLC has held itself out to be the developer in charge of the Lake Ohana Subdivision development. Lee Construction, Inc. is a co-permittee in regard to storm water discharge authorization no. IA 8074-7879.

3. On May 23, 2005, the Department received a storm water complaint in regard to Lake Ohana Subdivision. The complainant alleged that "minimal effort is being extended by the developer to control soil erosion and large amounts of soil are being washed away. A site inspection was conducted by the Department on May 25, 2005. The inspection found inadequate or ineffective storm water controls. It was determined at that time that Lee Construction, Inc. was working at the site.

4. On June 7, 2005, the Department met with Craig Nakamoto and the site engineer, Elizabeth Hunter, at the Lake Ohana Subdivision. The Pollution Prevention Plan (PPP) was reviewed with the parties. It was determined that two areas of the development, the "Commercial Area" and "Ohana Ridge" were not covered by the PPP. "Ohana Ridge" is covered by a separate storm water authorization, No. IA-5579-5424, issued November 14, 2002. Photographs were taken on this date. The photographs show inadequate storm water controls. The review of the PPP and inspection reports disclosed noncompliance with inspection requirements.

5. On July 1, 2005, the Department received a complaint of storm water violations at the Lake Ohana Subdivision. This complaint was investigated on July 7, 2005 and July 12, 2005. Photographs were taken. Inadequate or ineffective controls were observed as well as inadequate vegetative cover.

6. On July 19, 2005, a Notice of Violation was issued to Ohana Lakes, LLC. The Notice cited deficiencies in the PPP and ineffective erosion controls at the site. The Notice directed Ohana Lakes, LLC to immediately install or repair effective sediment and erosion controls and to submit a revised PPP by July 28, 2005. The accompanying inspection report noted that in the contractor certification statement of the PPP, Lee Construction, Inc. is a listed co-permittee.

7. On July 26, 2005, the Department received a response to the Notice of Violation from attorney James Thomas.

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8. On August 16, 2005, the Department inspected the Lake Ohana Subdivision. Further deficiencies were observed on this date. Photographs were taken.

9. On November 1, 2005, the Department inspected the Lake Ohana Subdivision. A letter was sent to site engineer Elizabeth Hunter on November 7, 2005. A copy was also sent to Craig Nakamoto. Observations described in the letter included the removal of a terrace without replacement or the installation of alternative control measures, the failure to maintain erosion controls, active erosion on the site, and the need for additional controls.

10. On January 5, 2007, the Department received a complaint alleging storm water violations at the Lake Ohana Subdivision. A complaint investigation was conducted on January 12, 2007. The discharge of sediment to Pony Creek was documented on that date. The Department observed a continuation of the violations found at the site in 2005. Sediment controls were inadequate and erosion was occurring. Photographs were taken.

11. A Notice of Violation was issued on February 2, 2007 to Ohana Lakes, LLC. The Notice described the violations observed on January 12, 2007.

12. On May 15, 2007, the Department inspected the Lake Ohana Subdivision. The Department observed significant erosion problems and the continuing failure to address the deficiencies documented in 2005 and in January of 2007. Photographs were taken.

13. On February 15, 2008, the Department inspected the Lake Ohana Subdivision. On that date it was determined that necessary soil stabilization measures had not been implemented prior to the 2007-2008 winter season. Further violations included a failure to control vehicle tracking of sediment, failure to maintain vegetative cover and erosion controls, and failure to install velocity dissipation devices.

IV. CONCLUSIONS OF LAW

The Department, N-T Lands, LLC; Ohana Lakes, LLC; Craig Nakamoto; and Lee Construction, Inc. agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for stormwater discharges. The Commission has adopted regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for stormwater discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 10 under this definition includes

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“construction activity” including clearing, grading and excavation activities except operations that result in the disturbances of less than 1 acre of total land area which are not part of a larger common plan of development or sale.

2. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)“b” and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)“b,” the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director.

3. General Permit No. 2, Part IV, provides that the permittee must develop and implement a “pollution prevention plan” in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility’s design and operation, and must be modified to address deficiencies noted by the Department.

4. Lee Construction, Inc. has violated the provisions set forth above. The violations by Lee Construction, Inc. arise from its status as a co-permittee for storm waster permit authorization no. 1A-8074-7879

V. ORDER

The Department hereby orders and N-T Lands, LLC; Ohana Lakes, LLC; Craig Nakamoto; and Lee Construction, Inc. hereby agree to the following:

1. Lee Construction, Inc shall comply with all storm water permit requirements including the installation and maintenance of such additional storm water discharge control measures as to prevent further unauthorized discharges of sediment from the site; and
2. Lee Construction, Inc. shall pay a penalty in the amount of \$2,000 at the time of execution of this order.

NOTE: A permit holder is responsible for on-going compliance for the duration of a development project, including individual lot developments, unless the permit holder transfers responsibility as provided in 567 IAC 64.6(6).

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VI. PENALTY

1. Iowa Code sections 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Criminal sanctions are also provided for discharge violations.

2. Iowa Code Section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order at this time with a penalty. The penalty assessed by this Order is determined as follows:

a. Economic Benefit. N-T Lands, LLC; Ohana Lakes, LLC; and Craig Nakamoto have achieved significant cost savings by failing to implement, inspect, repair and maintain pollution prevention measures. Costs avoided include costs related to the application of mulch, the application of temporary seeding and fertilizer, and the instillation of sediment control structures. This economic benefit is being assessed to N-T Lands, LLC; Ohana Lakes, LLC; and Craig Nakamoto through the issuance of a separate administrative order. No economic benefit is being attributed to Lee Construction, Inc. pursuant to this Order.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above-cited violations is with administrative penalties, which are much lower than those that could be obtained through court action. Sedimentation of Iowa's waterways is a serious problem, and the regulatory agencies have recognized that uncontrolled runoff from construction sites is a significant contributor to these problems. It is not necessary to document a specific water quality impact from a specific site. The storm water permit program requires that best management practices be implemented at all regulated sites, and where construction is initiated without the necessary permits, it threatens the integrity of the program and thwarts achievement of state-wide water quality goals. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$1,000 is assessed to Lee Construction, Inc..

c. Culpability. Lee Construction, Inc. is engaged in the business of construction and property development. As a company engaged in this business, it has a heightened obligation to be aware of the applicable regulations. The refusal to comply after repeated notice constitutes a willful refusal to comply. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$1,000 is assessed to Lee Construction, Inc..

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference at 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Lee Construction, Inc.. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 16 day of
May, 2008

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LEE CONSTRUCTION, INC

Dated this 18 day of
April, 2008